IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WA.No. 1322 of 2007()

AGAINST THE JUDGEMENT IN WPC.18798/2006 DATED 23.01.2007
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APPELLANTS/ RESPONDENTS IN WP
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1. THE DIVISIONAL FOREST OFFICER,
   NEMMARA DIVISION, PALAKKAD.

2. THE FOREST RANGE OFFICER,
   KOLLAMKODU RANGE, KOLLAMKODU, PALAKKAD.

3. THE ADDITIONAL PRINCIPAL CHIEF
   CONSERVATOR OF FORESTS (CHAIRMAN, STATE EMPOWERED
   COMMITTEE CONSTITUTED BY THE CENTRAL EMPOWERED
   COMMITTEE) FOREST HEAD QUARTERS,
   THIRUVANANTHAPURAM.

BY SPL. GOVERNMENT PLEADER FOR FOREST SHRI RENJITH THAMPAN

RESPONDENT/ PETITIONER IN WP

N.YUSUF, S/O NINAN MOHAMMED RAWTHER,
ANNAYIKODE, PALLASSANA P.O., KUMBALAKODE,
ELAVANCHERRY, NEMMARA, PALAKKAD.

BY ADV. SRI.M.C.JOHN
SRI.C.PRABIN BENNY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1322 OF 2007

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Dated this the 18th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Though the case is listed for admission, by the consent of both the parties to the lis, the matter is taken up for final hearing since the issue involved in this case is comparatively a meagre one. We have heard the learned counsel appearing for the State Government and also the learned counsel appearing for the respondent.

2. The respondent was before this court in W.P. (C) 18798 of 2006. The main prayer in the Writ Petition was to direct the first respondent in the Writ Petition, viz., the Divisional Forest Officer, Nemmara Division, Palakkad to issue the No Objection Certificate as prayed for in Ext. P5 and as recommend in Ext. P6. The other prayer in the Writ Petition was to restrain the respondents from interfering with the smooth functioning of the petitioner's industrial unit.

3. The learned single Judge had disposed of the Writ Petition, directing the respondents to issue the No Objection Certificate to the petitioner within two weeks from the date of production of a copy of the

judgment.

4. In the instant case, the petitioner had placed reliance on the No Objection Certificate issued by the Forest Range Officer, Kollamkodu Range, Kollamkodu, Palakkad. dated 01.01.1992. The No Objection Certificate so issued by the authority is as under:

> *"Certified that there is no objection in Forestry point of view in erecting a Saw Mill in Sy. No. 493 of Kozhipathy village in an extent of 0.43 cents owned by Shri Malayandi Swamy, S/o. Ramaswamy Chettiyar, Moonkilmada, Chittur Taluk"*

5. Basing on the above said No Objection Certificate, though the petitioner had approached the second respondent for renewal of the No Objection Certificate, his request was not accepted by the second respondent. The second respondent directed the petitioner to approach the first respondent for grant of either a fresh No Objection Certificate or to renew the No Objection Certificate issued earlier. Since nothing was done by the first respondent, the petitioner was before this Court for appropriate direction in W.P.(C) 18798 of 2006. The learned single Judge, in our opinion ought to have kept in view the prayers sought for by the petitioner in the Writ Petition, before directing the respondents to issue the No Objection Certificate. As we have already noticed , the

learned single Judge should not have directed the respondents to issue the No Objection Certificate. If for any reason, the learned single Judge was of the opinion that the request of the petitioner requires to be granted, he should have directed the first respondent to consider the request so made by the petitioner for grant of No Objection Certificate in accordance with law, within a particular time frame. In our considered opinion, the learned single Judge, without doing so, had specifically directed the respondents to issue the No Objection Certificate. This, in our opinion, is impermissible.

6. However, the learned counsel appearing for the respondent herein sought to justify the impugned judgment by relying upon the observations made by the Apex Court in **Jawahar Lal Sharma vs. Divisional Forest Officer** (**(2002) 3 Supreme Court Cases 42)** and also the observation made by a Division Bench of this Court in the **Wayanad District Saw Mill Owners Association and others vs. State of Kerala and others (O.P.No. 25531 of 1998 dated 25th January, 2005**). In our opinion, both the decisions on which reliance is placed by him, may not assist him in whatsoever. In both the aforesaid cases, the issue involved was with regard to the renewal of licence granted to the Saw Mill owners. The Honourable Supreme Court, after taking into consideration the fact

that the licence had been granted earlier and the same had been renewed from time to time, held that the respondents were not justified in rejecting the request made for renewal of the licence.

7. Even before this Court, the case of the parties in O.P. 25531 of 1998 was that they had a licence and that was being renewed from time to time by the Forest authorities. It is only when they approached this court with the request for a direction to renew their licences, the same has been rejected in view of the decision of the Apex Court in **T.N. Godavarman Thirumulpad v. Union of India (AIR 1997 S.C. 1228**) by the learned single Judge. Keeping in view the observations made by the Apex Court in **Jawahar Lal Sharma Vs. Divisional Forest Officer ((2002) 3 Supreme Court Cases 42),** this Court had directed the authorities to renew the licences in favour of the petitioners therein.

8. In the present case, the No Objection Certificate had been issued by the authority somewhere in the year 1992 and the same has not been renewed thereafter. If for any any reason, his request for renewal of licence has been rejected, he ought to have approached the appropriate forum, as observed by the Apex Court.

9. In view of the above, we do not think that the learned single Judge was justified in issuing a positive direction to the

respondents/appellants herein for renewal of the licence. Therefore, the Writ Appeal filed by the State requires to be allowed and the orders passed by the learned single Judge requires to be set aside and is accordingly set aside. In the facts and circumstances of the case, the parties are directed to bear their own costs.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK